

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BOBBY WILLIAMS,	§	
	§	
Plaintiff,	§	
	§	
V.	§	No. 3:19-cv-519-M-BN
	§	
INDIO MANAGEMENT CO. and LISA	§	
SMITH,	§	
	§	
Defendants.	§	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Bobby Williams filed a *pro se* complaint alleging housing discrimination based on a disability. *See* Dkt. No. 2. His action has been referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from Chief Judge Barbara M. G. Lynn.

On March 19, 2019, the Court granted him leave to proceed *in forma pauperis* and entered a notice of deficiency (the “NOD”), explaining:

Under the provisions of 28 U.S.C. § 1915, permission is hereby granted for Williams to proceed *in forma pauperis* in this Court until judgment is entered. But service of process shall not issue, if at all, until the Court completes its screening of this action under 28 U.S.C. § 1915(e)(2).

And, even though the facts alleged in Williams’s complaint may, for example, raise a plausible claim of housing discrimination under the Fair Housing Act – requiring the Court to order that the complaint be served – Williams’s failure to provide an address at which each defendant may be served prevents the Court from issuing process as to, and serving, the defendants at this time.

While 28 U.S.C. § 1915(d) and Federal Rule of Civil Procedure 4(c)(3) free the plaintiff “of the burden to serve process,” it remains the plaintiff’s “responsibility to locate the defendants and submit their

addresses to the court.” *Clark v. ASC Mortg.*, No. 3:14-cv-4236-M, 2015 WL 3632562, at \*1 (N.D. Tex. June 10, 2015) (quoting *Shelton v. Mich. Turkey Producers Co-op., Inc.*, No. 1:13cv441, 2014 WL 4388366, at \*6 (W.D. Mich. Sept. 5, 2014) (citing, in turn, *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996)); citing *Boyer v. Taylor*, Civ. A. No. 06-694-GMS, 2009 WL 2338173, at \*11 (D. Del. July 30, 2009) (“[A] district court has no duty to assist a plaintiff in locating a defendant’s address for the purpose of service of process.” (citing, in turn, *Barmes v. Nolan*, 123 F. App’x 238, 249 (7th Cir. 2005)))).

Williams must therefore provide the Court with an address at which to serve each defendant by **April 18, 2019**. Failure to do so subjects his complaint to dismissal for failure to prosecute and obey an order of the Court. *See* FED. R. CIV. P. 41(b).

Dkt. No. 7.

It is now seven weeks past the deadline to comply with the Court’s order, and Williams has failed to comply with the NOD or otherwise contact the Court. The undersigned therefore enters these findings of fact, conclusions of law, and recommendation that, for the reasons stated below, the Court should dismiss this action without prejudice under Federal Rules of Civil Procedure 41(b).

### **Legal Standards and Analysis**

Rule 41(b) “authorizes the district court to dismiss an action *sua sponte* for failure to prosecute or comply with a court order.” *Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835, 844 (5th Cir. 2018) (citing *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (per curiam)); accord *Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 440 (5th Cir. 2016) (failure to comply with a court order); *Rosin v. Thaler*, 450 F. App’x 383, 383-84 (5th Cir. 2011) (per curiam) (failure to prosecute).

This authority “flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins.*

*Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)); *see also Lopez v. Ark. Cnty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978) (“Although [Rule 41(b)] is phrased in terms of dismissal on the motion of the defendant, it is clear that the power is inherent in the court and may be exercised sua sponte whenever necessary to ‘achieve the orderly and expeditious disposition of cases.’” (quoting *Link*, 370 U.S. at 631)).

The Court’s authority under Rule 41(b) is not diluted by a party proceeding *pro se*, as “[t]he right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.” *Wright v. LBA Hospitality*, 754 F. App’x 298, 300 (5th Cir. 2019) (per curiam) (quoting *Hulsey v. Texas*, 929 F.2d 168, 171 (5th Cir. 1991) (quoting, in turn, *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. Nov. 1981))).

A Rule 41(b) dismissal may be with or without prejudice. *See Long v. Simmons*, 77 F.3d 878, 879-80 (5th Cir. 1996).

Although “[l]esser sanctions such as fines or dismissal without prejudice are usually appropriate before dismissing with prejudice, ... a Rule 41(b) dismissal is appropriate where there is ‘a clear record of delay or contumacious conduct by the plaintiff and when lesser sanctions would not serve the best interests of justice.’”

*Nottingham*, 837 F.3d at 441 (quoting *Bryson v. United States*, 553 F.3d 402, 403 (5th Cir. 2008) (per curiam) (in turn quoting *Callip v. Harris Cnty. Child Welfare Dep’t*, 757 F.2d 1513, 1521 (5th Cir. 1985))); *see also Long*, 77 F.3d at 880 (a dismissal with prejudice is appropriate only if the failure to comply with the court order was the result of purposeful delay or contumacious conduct and the imposition of lesser sanctions

would be futile); *cf. Nottingham*, 837 F.3d at 442 (noting that “lesser sanctions” may “include assessments of fines, costs, or damages against the plaintiff, conditional dismissal, dismissal without prejudice, and explicit warnings” (quoting *Thrasher v. City of Amarillo*, 709 F.3d 509, 514 (5th Cir. 2013))).

“When a dismissal is without prejudice but ‘the applicable statute of limitations probably bars future litigation,’” that dismissal operates as – i.e., it is reviewed as – “a dismissal with prejudice.” *Griggs*, 905 F.3d at 844 (quoting *Nottingham*, 837 F.3d at 441); *see, e.g., Wright*, 754 F. App’x at 300 (affirming dismissal under Rule 41(b) – potentially effectively with prejudice – where “[t]he district court had warned Wright of the consequences and ‘allowed [her] a second chance at obtaining service’” but she “disregarded that clear and reasonable order”).

By not complying with the NOD, Williams has prevented this action from proceeding. And, by so doing, he has failed to prosecute his lawsuit and also failed to obey a court order. A Rule 41(b) dismissal of this lawsuit without prejudice is warranted under these circumstances. The undersigned concludes that lesser sanctions would be futile. The Court is not required to delay the disposition of this case until such time as Williams decides to comply with the Court’s directives. The Court should therefore exercise its inherent power to prevent undue delays in the disposition of pending cases and *sua sponte* dismiss this action without prejudice.

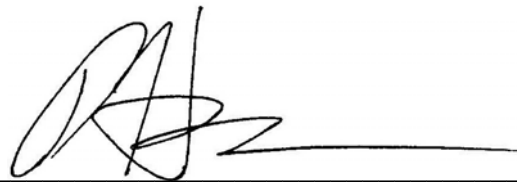
But, if during the period for filing objections to this recommendation, Williams complies with the NOD, the undersigned will withdraw the findings, conclusions, and recommendation and continue to manage this action for pretrial purposes.

### **Recommendation**

The Court should dismiss this action without prejudice under Federal Rules of Civil Procedure 41(b).

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: June 6, 2019

A handwritten signature in black ink, appearing to read 'D. Horan', with a long horizontal line extending to the right.

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DAVID L. HORAN  
UNITED STATES MAGISTRATE JUDGE